



THE ACQUISITION OF GOVERNMENT PROPERTY BY DEFENSE CONTRACTORS

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THE PROCESS OF ACQUISITION

- It is a **CONTRACTUAL** requirement that contractors have a **PROCESS** for managing the **ACQUISITION** of PROPERTY that is or becomes GOVERNMENT PROPERTY





A Preface -

APPLICABLE VCS

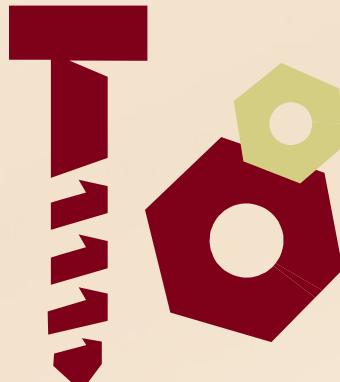
- Though it is a contractual requirement that contractors use **VOLUNTARY CONSENSUS STANDARDS** or Industry Leading Practices for the **MANAGEMENT OF Government Property...**
- **THERE IS NO VOLUNTARY CONSENSUS STANDARD FOR THE ACQUISITION PROCESS**
– **AS OF TODAY.**

*Learn. Perform.
Succeed.*



THE PROCESS OF ACQUISITION

- FAR 52.245-1(f)(1)(i) Acquisition of Property
- A Very Broad General Statement
 - The contractor shall document that all property was acquired consistent with its engineering, production planning, material control operations, and/or cost accounting disclosure statement.





- **DEFINITIONS**

- **Government Property**

- means all property **owned** or
leased by the
Government.

- Government property includes **both**
Government-furnished and
Contractor-acquired Property.

CONCEPT
OF TITLE

- **DEFINITIONS**

- **Government Furnished Property**

- means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract.

TITLE ALWAYS
VESTS IN
GOVERNMENT



- **DEFINITIONS**

- **Contractor Acquired Property (CAP)**

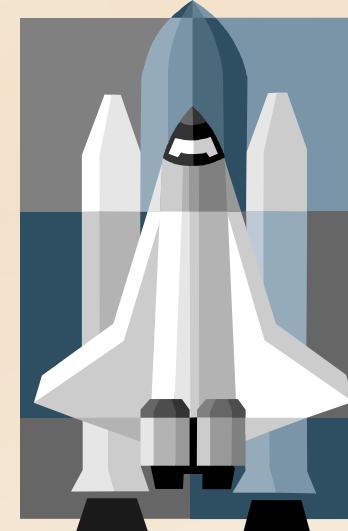
- means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the ~~Government~~ has...

~~title.~~



**ACQUISITION
AND
TITLE
ARE
LINKED!**

- **TITLE TO GFP ALWAYS VESTS IN THE GOVERNMENT**
 - FAR 45.401
 - FAR 52.245-1





ACQUISITION OF GFP

- GFP may come into the possession of the contractor three ways:
 - PUSHED
 - PULLED or
 - TRANSFERRED



DD FORM 1348

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ACQUISITION OF GFP

- **"PUSHED" GFP**
 - **Government activities may DIRECT SHIP GFP to contractors with NO ACTIONS on the part of the Contractor.**
 - **GFP IS SPECIFIED IN THE CONTRACT**
 - **GOVERNMENT SHIPS**
 - **CONTRACTOR NEED TAKE NO ACTION TO ACQUIRE**
 - **CONTRACTOR RECEIVES PROPERTY INTO THEIR PROPERTY MANAGEMENT SYSTEM**



ACQUISITION OF GFP

- “PULLED” GFP
 - WHERE THE CONTRACTOR **REQUISITIONS** THE GFP REQUIRED FOR CONTRACT PERFORMANCE
 - Requisition method specified in the contract
 - Military Standard Requisitioning and Issuance Procedures (**MILSTRIP**)
 - DoD 4000.25-1-M
 - **MILSTRIP MANUAL** on the WEB
<http://www.dla.mil/j-6/dlmso/eLibrary/Manuals/MILSTRIP/Default.asp>
 - Also **FEDSTRIP**



ACQUISITION OF GFP

- “PULLED” GFP
 - Contractor must have the **AUTHORITY** to **REQUISITION** GFP through the ~~MILSTRIP~~ Contracting Officers:
SYSTEM
It is **YOUR** Responsibility
To Provide this
Authorization.
 - REFERENCES
 - FAR PART 51
 - DFARS PART 251
 - PLUS THE ASSOCIATED CLAUSES



ACQUISITION OF GFP

- “PULLED” GFP
 - CONTRACTOR MAY BE LIMITED TO REQUISITIONING ONLY CERTAIN ITEMS OF GOVERNMENT PROPERTY THROUGH THE MILSTRIP SYSTEM
 - Procurement activities establish a MANAGEMENT CONTROL ACTIVITIES (MCA) to SCREEN all MILSTRIP requisitions to ensure contractor requisitions ONLY that “stuff” that is AUTHORIZED
 - DoD 4140.1-R, May 23, 2003 (Chapter 5.11)
 - <http://www.dtic.mil/whs/directives/corres/html2/p41401r.html>



ACQUISITION OF GFP

- **“PULLED” GFP**
 - CONTRACTORS SHALL PROVIDE PROCEDURES TO ADDRESS THIS PROCESS IN THEIR PROPERTY MANAGEMENT SYSTEM WHERE MILSTRIP REQUISITIONS ARE AUTHORIZED.
 - Critical aspects
 - Force Activities Designators (FAD)
 - Priority designators

SUGGESTION!!!

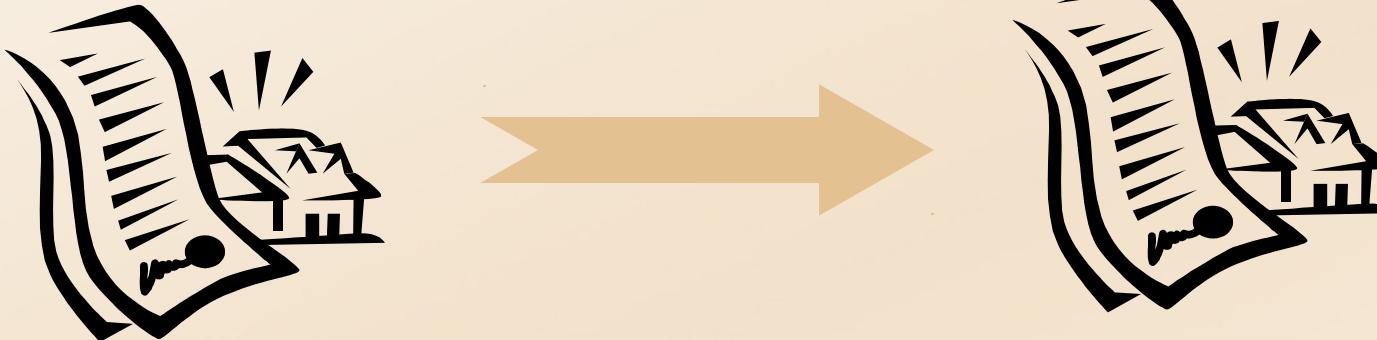
ORDER THE DLA DESKBOOK

<http://www.dla.mil/J-4/publication.asp#Customer>



ACQUISITION OF GFP

- **GFP BY TRANSFER**
 - GFP MAY COME INTO EXISTENCE BY TRANSFER OF PROPERTY FROM ONE CONTRACT TO ANOTHER



WARNING: THERE BE MODS HERE!
With all due respect to Scotty!

- WHERE CAP IS TRANSFERRED FROM CONTRACT #1 to CONTRACT #2 - with no costs transferred - it becomes GFP to Contract # 2.
- BOTH CONTRACTS MUST AUTHORIZE THE TRANSFER





CONTRACTOR ACQUIRED PROPERTY (CAP)

- **ACQUISITION** may take many different forms and may use many different processes:
 - Acquiring items from a vendor/subcontractor
 - Fabricating items in-house
 - Issuing items from contractor-owned stores/stock and stockrooms
 - Transfer
 - Reutilization
 - Lease (CAREFUL WITH THIS ONE - more later!)



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **PURCHASE** from Vendor
 - Contractor issues a P.O. or Subcontract with a vendor or supplier
- **ISSUANCE** from Stock
 - Contractor may already have an item in his/her stockroom and may issue it and use it on the contract.



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **FABRICATED PROPERTY**
 - Though not specifically called out as such the GOVERNMENT takes title to property that is FABRICATED under cost reimbursement type contracts
 - E.g., parts machined from raw materials
 - Special tooling fabricated in the contractor's tool shop.



*Learn. Perform.
Succeed.*





CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TRANSFER of Property**
 - Contractor may use a system to move property, generally material, from one contract to another WITH ITS ASSOCIATED COSTS, i.e., generally crediting the losing contract and debiting the gaining contract.
 - The Material Management Accounting System (More on this later)
 - DFARS 242.72 and
 - DFARS 252.242-7004



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **LEASING OF PROPERTY**
 - If a contractor **LEASES** property (Even under a Cost Reimbursement contract, it **DOES NOT** become **Government Property**).
 - If the **CONTRACTOR leases property**, that property is bound by the terms and conditions of the Lease - and the “LESSOR” still retains title to it!
 - If the **GOVERNMENT leases the property**, then the Government TASKS the Contractor to MANAGE that property as GFP - because the contractor has an obligation to return it to the Government, and the Government to return it to the LESSOR.



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **ALL ACQUISITIONS MUST BE SUPPORTED BY A VALID NEED OR REQUIREMENT.** Some Examples:
 - Engineering Requirements in R&D
 - Bill of Material (BOM), Material requirements list (MRL), Drawings or Blueprints in a Production setting
 - Contractual Unit requirements in an O&M or Services setting
- **When a contractor acquires an item or items there must be supporting documentation for that item/asset and its NEED/REQUIREMENT in and for performing the contractually required work**



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO CAP IS DRIVEN BY MULTIPLE FACTORS:**
 - TYPE OF CONTRACT
 - COST PRINCIPLES
 - COST ACCOUNTING STANDARDS
 - CONTRACTOR'S ACCOUNTING POLICIES AND PROCEDURES





CONTRACTOR ACQUIRED PROPERTY (CAP)

- TYPES OF CONTRACTS
- TWO BROAD PRICING ARRANGEMENT



FIXED
PRICE

A yellow scroll-like graphic with rounded ends and a thin black border. The text "FIXED PRICE" is centered on the scroll.

COST
REIMB.

A yellow scroll-like graphic with rounded ends and a thin black border. The text "COST REIMB." is centered on the scroll.

- PLUS LOTS OF VARIANTS



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS**
 - Generally **CONTRACTORS** retain title to **ALL** property Acquired under **FIXED PRICE CONTRACTS**
 - The Government only obtains title to the **DELIVERABLE END ITEM** specified in the contract through **Contract Line Item Numbers (CLIN)**
NOTE: Financing Provisions have an impact on title

*Learn. Perform.
Succeed.*





CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS**
 - If there is a **CLIN** directing the contractor to acquire **MATERIAL**, **FOR THE GOVERNMENT**, as a **DIRECT ITEM OF COST**
 - **TITLE VESTS in the GOVERNMENT:**
 - VENDOR's DELIVERY
 - **TITLE to all other material vests in the GOVERNMENT**
 - Issuance of Material
 - Commencement of Processing of Material or its use

*Learn: Reimbursement of the cost,
Succeed Whichever comes first!*



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO PROPERTY UNDER FIXED PRICE CONTRACTS**
 - **TITLE to each item of**
 - **EQUIPMENT, SPECIAL TEST EQUIPMENT & SPECIAL TOOLING**
 - **ACQUIRED by the CONTRACTOR**
 - **FOR THE GOVERNMENT**
 - shall pass to and **VEST in the GOVERNMENT** when:
 - Its USE COMMENCES or
 - When the Government has PAID for it,
 - Whichever is earlier,
 - Whether or not title previously vested in the Government.



CONTRACTOR ACQUIRED PROPERTY (CAP)

- TITLE TO PROPERTY UNDER
COST REIMBURSEMENT
CONTRACTS
 - TITLE to ALL PROPERTY
purchased by the contractor for which the
contractor is
 - ENTITLED to be REIMBURSED as a
 - DIRECT ITEM OF COST shall pass to and
 - VEST IN THE GOVERNMENT upon
 - VENDOR'S DELIVERY



CONTRACTOR ACQUIRED PROPERTY (CAP)

- **TITLE TO PROPERTY UNDER
COST REIMBURSEMENT
CONTRACTS**

- **TITLE to ALL OTHER PROPERTY**
- The cost of which is reimbursable to the contract, shall pass to and vest in the **GOVERNMENT** upon -
 - **Issuance of Material**
 - **Commencement of Processing of Material or its use**
 - **Reimbursement of the cost,**
 - **Whichever comes first!**



CONTRACTOR ACQUIRED PROPERTY (CAP)

- What does **ENTITLED** to be **REIMBURSED** mean???
- Cost must be:
 - **REASONABLE**
 - **ALLOCABLE** and
 - **ALLOWABLE**



FAR PART 31



REASONABLE

- **FAR 31.201-3**
 - (a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

REASONABLE

PRUDENT PERSON

**COMPETITIVE
BUSINESS**

REASONABLE

- Reasonableness can be determined by the Terms and conditions of the Contract
 - Items specifically called out to be acquired
- Reasonableness can be determined by reviewing drawings, blueprints, bills of material, or other documents showing:
 - Need of the item
 - Quantity needed
- Contract requirements



- FAR 31.201-4
 - A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship.





ALLOWABLE

- FAR 31.201-2
 - (a) A cost is allowable only when the cost complies with all of the following requirements:
 - (1) Reasonableness.
 - (2) Allocability.
 - (3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the circumstances.
 - (4) Terms of the contract.
 - (5) Any limitations set forth in this subpart.



COST ACCOUNTING STANDARDS

- **DEFINITION**
 - The set of **RULES** on cost accounting for Government contracts which were promulgated by the Cost Accounting standards Board
 - » **Government Contracts Guidebook**
 - » **Arnavas and Ruberry**
 - **<http://www.whitehouse.gov/OMB/procurement/casb.html>**



COST ACCOUNTING STANDARDS

- **30.101 Cost Accounting Standards.**
 - (a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.
- **30.201-4 Contract clauses.**
 - (a) Cost accounting standards.
 - (1) The contracting officer shall insert the clause at FAR 52.230-2, Cost Accounting Standards, in negotiated contracts

- **COST ACCOUNTING STANDARDS AFFECT THE WAY CONTRACTORS CAN CHARGE US FOR PROPERTY**
 - For example - whether or not contractor direct charge us for “GENERAL PURPOSE EQUIPMENT”
- **CAS 402 - CONSISTENCY**
 - Kitchen English...
 - BUY Like Item,
 - USE for Like Purpose,
 - THEN KR MUST CHARGE in Like FASHION
 - http://farsite.hill.af.mil/reghtml/regs/far2af_mcfars/fardfars/far/FARapndx1.htm#P1185_222409





COST ACCOUNTING STANDARDS

- One needs to have ACCESS TO and READ and UNDERSTAND the contractor's Disclosure Statement
 - CASB-DS-1 FORM
 - http://www.whitehouse.gov/OMB/procurement/casb_ds-1.pdf
 - http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/FARapndx1.htm#P332_70916
- Do a Search on Google for “Cost Accounting Standards Disclosure Statements”
 - Lots of hits
 - <http://www.utah.edu/govacct/d1.htm>
 - <http://www.rgs.uky.edu/ospa/cas/dsmc.pdf>
 - http://research.uiowa.edu/dsp/main/downloads/ds2_rev1.pdf



APPROVALS

- **DOES THE CONTRACTOR REQUIRE APPROVAL PRIOR TO ACQUIRING PROPERTY FOR THE GOVERNMENT?**
 - **GENERALLY NO!**
 - **BUT SOMETIMES MAYBE!**





APPROVALS

- **FAR 52.244-2 SUBCONTRACTS CLAUSE**
 - If the contractor **DOES NOT** have an **approved Purchasing System**, consent to subcontractor is **required** for **ANY SUBCONTRACT** that
 - Is Cost Reimbursement
 - Is FP and exceeds the Simplified Acquisition Threshold or 5% of the total cost of the contract.
 - FAR 52.244-2(c)
 - Or any items specified in the contract
 - FAR 52.244-(3)

Government Property Administrator's ACTIONS

- If PA finds items that he/she believes are not allowable, the PA shall notify the ACO and request review by the ACO and the COGNIZANT DCAA Auditor for compliance with the contractor's Disclosure statement and CAS applicability.
- PA may also recommend to the ACO **DISALLOWANCE** of the **REIMBURSEMENT** OF THE COST for the item.





OTHER CONCERNS

- **TITLE TO PROPERTY CHARGED INDIRECT**
 - There is some debate raging from a tax standpoint that says the Government has title to Property Charged through overhead/indirect
 - TODAY, we do NOT manage indirect charged property as Government Property for purposes of the Government Property Clause.



REFERENCES

- **Federal Acquisition Regulations - Current Version**
- **Purchasing and Materials Management.** Dobler, Burt and Lee. 1990. McGraw Hill.
- **The Purchasing Handbook.** Fearon, Dobler and Killen. 1993. McGraw Hill.
- **Government Contracts Guidebook.** Arnavas. West Publications. 2005
- **The Standard Property Book.** The National Property Management Association, 1999.



CONTACT INFO

- **If you got Questions about Government Property... I got answers (Maybe, hopefully, probably)!!!**
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